IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1800 of 1986
With
SPECIAL CIVIL APPLICATION No. 1794 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANJIBHAI A PARMAR & 3 Ors. & Others - Petitioner(s)

Versus

UNION OF INDIA & 2 Others. - Respondent(s)

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Appearance : 1,MR MK VAKHARIA for Petitioner(s) : 1 - 4.
MR YN RAVANI for Respondent(s) : 1,
(MR SR SHAH) for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
Ms. Archana Raval, AGP for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/01/2006

ORAL JUDGMENT

As both the Special Civil Applications are interconnected and with regard to the same property, they are being disposed of by this common Judgment and Order.

2. So far as Special Civil Application No. 1800 of 1986 is concerned, the same is filed by one Kanjibhai Amrabhai Parmar and others challenging the Notification issued by the Central Government under Section 4(3) of Ancient Monuments and Archaeological Sites and Remains Act, 1958 [hereinafter referred to as 'the Act'] declaring 'Vithalbhai Haveli' together with adjacent area comprising part of Survey No. 81 situate at Village Vaso, Taluka Nadiad, District Kheda as 'Archaeological Monument' to be of national importance.

2.1. So far as Special Civil Application No. 1794 of 1987 is concerned, the same is filed by one Mahendra Gopaldas Desai for an appropriate writ, order or direction directing the respondents more particularly the Central Government and the Superintending Archaeologist, Vadodara to take immediate steps for preservation and maintenance of protected monument, 'Vithalbhai Haveli' at Vaso in Kheda District.

3. It appears from the record that 'Vithalbhai Haveli' situate at Vaso, District-Kheda, contains Wooden Carvings of ancient times which are rarely found in the country. Looking to the importance of this monument, the Government of India by Notification published in Central Government Gazette dated 6.9.1978 expressed its intention to declare the said Haveli as a monument of national importance and

invite objections from the public. It appears from the record that thereafter objections were invited as contemplated under sub-section (1) of Section 4 of the Act. It appears from the record that the said property, i.e., superstructures of the building known as 'Vaso Haveli' with the wooden carvings etc., came to be purchased by the petitioner from the original-owner, i.e., one Anatprasad Amin and Smt. Kamlaben, Wd./o. Vithaldas Motilal Amin and after dismantling the same it was agreed between the parties that possession of vacant site of the land should be handed over to the owners. It appears that thereafter the Notification issued under Section 4(3) of the Act by the Central Government came to be challenged by the petitioners by way of Special Civil Application No. 1147 of 1979 on the ground that the said notification came to be issued without giving opportunity to the petitioners to submit their objections and/or considering their objects on merits and the learned Single Judge of this Court, vide judgment and order dated 7.9.1980 allowed the said Special Civil Application; quashed and set aside the Notification issued under Section 4(3) of the Act dated 7th July 1979; and the Union Government was directed to consider the objections of the petitioners on merits and give opportunity of hearing to them if they so desire and decide as to whether the Notification was issued under Section 4(3) of the said Act according to the correct legal principles.

4. It appears from the record that thereafter petitioners' objections came to be considered; they

were given an opportunity to represent their case; and thereafter the impugned Notification came to be issued declaring the said monument to be of national importance under Section 4(3) of the Act. Being aggrieved and dissatisfied with the same, the Special Civil Application No. 1800 of 1986 came to be preferred by its petitioners. It appears from the record that the authority concerned was not taking proper care of the national monument and therefore the petitioner of Special Civil Application No. 1794 of 1987 has preferred the same for direction on the competent authority at Baroda and the Central Government to take steps to repair and protect the national monument.

5. Shri Mehul Vakharia, learned advocate appearing on behalf of the petitioners has submitted that the respondent authorities have not properly considered the objections submitted by the petitioners and that if the objections would have been considered in true perspective then the Central Government would not have issued the aforesaid Notification declaring the 'Vithalbhai Haveli' at Vaso as 'national monument'. He has further submitted that even proper procedure such as the procedure which was required to be followed before issuing the Notification under Section 4(1) of the Act has not been followed while issuing the present impugned notification under Section 4(3) of the Act and therefore it is requested to allow the Special

Civil Application No. 1800 of 1986.

6. Shri DF Amin, learned advocate appearing on behalf of the petitioner in Special Civil Application No. 1794 of 1987 has submitted that in fact the objections submitted by the petitioner were not pressed; the petitioner has only made grievance with regard to the compensation; and for that purpose he has mainly relied upon one communication dated 26th September 1983 by the petitioner to the Director of Monuments, Government of India, New Delhi. He has further submitted that as the competent appropriate authority of the Archaeological Department is not taking proper care of the property in question which is declared as a 'National Monument' he has requested to issue appropriate direction upon the respondents.

7. Heard the learned advocates appearing on behalf of the parties. The first contention on behalf of the petitioners is that before issuing the impugned Notification under Section 4(3) of the Act, the Notification under Section 4(1) of the Act was not issued and even no proper procedure was followed as required under Section 4(1) of the Act. Relying upon Section 4(1) of the Act, it is submitted that where the Central Government is of the opinion that any ancient monument or archaeological site and remains not included under Section 3 is of national importance, it may, by notification in the official gazette give two months' notice of its intention to

declare such ancient monument or archaeological site and the remains to be of national importance and a copy of every such notification shall be affixed in a conspicuous place near the monument or site and remains, as the case may be. He has submitted that such a Notification was not issued before issuance of the present impugned Notification under Section 4(3) of the Act. It is required to be noted that after initial Notification under Section 4(1) of the Act which was issued in the year 1977, the Notification under Section 4(3) of the Act came to be issued on 7th July 1979 which came to be challenged by the petitioners by way of Special Civil Application No. 1147 of 1979 and the learned Single Judge while allowing the said Special Civil Application set aside the Notification dated 7th July 1979 only which was issued under Section 4(3) of the Act; the Notification which was issued under Section 4(1) of the Act was not set aside; and the Central Government was directed to consider the objections of the petitioners on merits, give an opportunity of hearing to them; and thereafter to issue the Notification under Section 4(3) of the Act. Therefore, now it is not open for the petitioners to contend anything with regard to the Notification under Section 4(1) of the Act and it is not open for the petitioner to contend that while issuing the impugned Notification under Section 4(3) of the Act either a Notification under Section 4(1) was not issued and/or no proper procedure was followed. Therefore the only question which requires

consideration is on the aspect of issuance of Notification under Section 4(3) of the Act. It is required to be noted that though initially the petitioner objected to Government's declaration of the said monument as 'National Monument', from the documents of correspondence it appears that the petitioner has not pressed for those objections, and by communication dated 26th September 1983 the only grievance raised by the petitioner was with regard to compensation on account of purchase of superstructures of Vaso Haveli by the petitioner and accrual of ownership rights thereof. Therefore, when the petitioner has not challenged and/or objected to declaring the monument as 'National Importance', it is not open for the petitioner now to challenge the same. The impugned notification has been issued under Section 4(3) of the Act by the Central Government on being satisfied that the said 'Vithalbhai Haveli' is an archaeological monument which is required to be declared as 'National Importance', after considering the objections received from the petitioners and other persons and after giving them a personal hearing. In view of the above facts and circumstances, it cannot be said that the Notification impugned in the Special Civil Application No. 1800 of 1986 declaring Vithalbhai Haveli together with adjacent area comprised in part of plot No. 81 as shown in the site plan is of 'national importance' coupled with the said Notification under Section 4(3) of the Act is in any way illegal and/or contrary to the provisions of the

Act. Under the circumstances, there is no substance in the Special Civil Application No. 1800 of 1986 and the same requires to be dismissed and is accordingly dismissed. Rule is discharged, however, there will be no order as to costs.

8. So far as Special Civil Application No. 1794 of 1987 is concerned, the “Vithalbhai Haveli”, together with adjacent area comprised in part of Plot No. 81 situate at Vaso, District-Kheda, declared as an archaeological monument is of 'National Importance', and it is the bounden duty of the Central Government and the Archaeological Department to preserve and protect the same. Under the circumstances, the Central Government as well as its subordinate authorities under the Archaeological Department, more particularly, the Superintending Archaeologist, Archaeological Survey of India, Western Circle, Vadodara, is directed to see that the said monument, which is declared as 'national importance', is preserved and protected. They are directed to take all necessary steps to preserve and continue to protect and maintain the same. The Special Civil Application No. 1794 of 1987 is, therefore, allowed.

Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.